

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3892 of 1998

to

FIRST APPEAL No 3896 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RUKHIBEN WD/O MAFAJI

Versus

II ADDITIONAL SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR AJ PATEL with MR AB MUNSHI for Appellant.
MR UDAY BHATT for the Respondents.

CORAM : MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT

Date of decision: 29/09/98

ORAL JUDGEMENT

These five first appeals are directed against the common order dated 25.5.98 passed by the Extra Assistant and Special Judge (LAR) Ahmedabad (Rural), Mirzapur in land Acquisition references No.623/95, 624/95, 625/95, 626/95 and 627/95. Whereas the appeals are directed against the common order and all these appeals are based on identical facts involving common questions of law, we propose to decide all these five appeals by this common judgement and order.

2. The lands bearing Survey/Block No.1844 admeasuring 01-04-60 sq.mtrs of Village Sanand (Land Acquisition Case No.623/95); Survey/Bloc No.1846 and 1849 admeasuring 00-49-76 + 032-29 = 0-82-05 sq.mtrs of Village Sanand District Ahmedabad (in land acquisition case N.624/95); Survey/Block No.1847 admeasuring 00-57-85 sq.mtrs of Village Sanand, District : Ahmedabad (in land acquisition case no.625/95); Survey/Block No.1870 admeasuring 0-31-14 sq.mtrs of Village Sanand, District Ahmedabad (in land acquisition case no.626/95) and Survey/Block No.1873 admeasuring 00-27-30 sq.mtrs of village Sanand, District Ahmedabad (in land acquisition case no.627/95) were sought to be acquired for the purpose of Sanand - Fangdi - Juval - Bavla Road. For this purpose notification under Section 4 of the Land Acquisition Act was issued on 5.9.91. The notification under Section 6 was issued on 28.5.92 and the award was passed on 6.6.94 by the concerned Land Acquisition Officer granting compensation at the rate of Rs.5/- per sq.mtr as against the claim of Rs.100/- per sq.mtr against the award dated 6.6.94. The land acquisition references no.623 to 627/95 were sought and while deciding the references the reference court has enhanced, the compensation by a sum of Rs.65/- per sq.mtr in addition to the compensation which was awarded by the concerned land Acquisition Officer at the rate of Rs.5/per sq.mtr only, by common order dated 25.5.98 passed in 5 land acquisition references as aforesaid. Aggrieved from this order dated 25.5.98 the present appeals have been filed in which the claimants have confined their claim to Rs.90/- per sq.mtr instead of Rs.100/- per sq.mtr. as was claimed before the Lower Court. The Learned Counsel for the appellants has argued with reference to the documents Exh.23 i.e. deposition of claimant Nagjibhai Rabari, Exh.32 i.e. written arguments and Exh.20, Exh.21 and 22 i.e. Court awards in land acquisition references no.666/89, 1630/87 and 37/89. It has been submitted that the land concerned in each of these 3 references i.e. Exh.20 to Exh.22 were all agricultural lands in which the notifications under Section 4 had been issued on 13.6.85, 20.12.84 and

20.5.81 respectively. It has also been submitted that the land concerned in these three Exhibits 20, 21 and 22 was of Sanand, Nadhrad and Sanand respectively and in Exh.20 the additional compensation at the rate of Rs.55 per sq.mtr., in Exh.21 the additional compensation at the rate of Rs.50/- per sq.mtr and in Exh.22 compensation at the rate of Rs.45/- per sq.mtr. was granted. It is also submitted that Exh.20 final award was in respect of the land concerning the same village i.e. Sanand for the same purpose of acquisition i.e. for road and in this case no appeal was preferred. Against Exh.21 final award concerned land was of a village adjoining to Sanand and the acquisition was for the same purpose i.e. construction of the road and no appeal was filed. An appeal was filed only against the final award Exh.22 in which the land was of the same village Sanand and the land was acquired for the same purpose i.e. construction of road and in this matter, First Appeals 1575/92 to 1596/92 were dismissed summarily. On the basis of the facts and the court awards in case of Exh.20, 21 & 22 it has been argued by the Learned Counsel for the appellant that even if the lowest rate at which the compensation was granted (i.e. at the rate of Rs.45/- sq.mtr in case of Exh.22 against which the appeals were dismissed summarily by the Division Bench) is taken to be the basis keeping in view the relevant dates of notifications issued under Section 4 i.e. 20.5.81 as compared to the date of notification under Section 4 in the present cases i.e. 5.9.91, the claimants should have been granted 10% per annum for the period of 10 years and in that case the compensation would come out to be Rs.90/- per sq.mtr or little more than that. In the present case and therefore the compensation should have been granted at the rate of Rs.90/- per sq.mtr and therefore the enhancement from the rate of Rs.5/- per sq.mtr by Rs.65/- per sq.mtr only in addition is wrong and unreasonable. The appellants should have been awarded at the rate of Rs.90/- per sq.mtr. The 10% per annum increase in the rate of compensation is sought only for the purpose of arriving at fair market value keeping in view the date on which the notification under Section 4 is issued.

3. The Learned Counsel for the appellants has also submitted that according to the provisions of Sec.23(1-A) of L.A. Act, the appellants were further entitled to an increase of compensation by 12% per annum on such market value for the period commencing from the date of taking possession till the date of publication of notification under Section 4(1) in respect of such land because in this case the possession was taken in 1962-1963 i.e. much earlier than the date of issue of notification under

Section 4. The grievance is that the Reference Court has not considered the claim of the appellants with reference to Section 23 (1-A) which is reproduced as under:-

"In addition to market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4 sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier."

4. In support of his submissions the learned Counsel for the appellants has placed reliance on 1998(1) GLR 130 i.e. Deputy General Manager, ONGC Vs. Chaturji Lalaji, a Division Bench Judgement of this court, AIR 1995 Supreme Court 2492 i.e. Assistant Commissioner Gadhak Vs. Mathapati Basanpati Laeu; 1992 Supplement (II) Supreme Court Cases 69, Gokal Vs. State of Haryana.

5. No dispute has been raised about accuracy of facts relating to Exh.20, 21 and 22 on which reliance has been placed by the Appellants but the learned Assistant Government Pleader has submitted that in the case of land of Gramthal of Village Sanand itself a Division Bench of this Court in F.A.No.1783/84 had awarded compensation at the rate of Rs.23/- per sq.mtr only and the decision dated 10.10.96 rendered by the Division Bench in F.A. 1783/84 has been relied upon and while making references to a map which was placed for our perusal it was submitted that in the aforesaid first appeal no.1783/84 the Court had granted compensation at the rate of Rs.23/per sq.mtr only even in the case of the land which was in the Gramthal of Village Sanand, whereas the lands in question are away from Village Sanand by a distance of about 3 kms and therefore there is no question of enhancing the compensation in favour of the claimants in these appeals and the appeals should be dismissed. The Learned Assistant Government Pleader has also submitted that they have also preferred appeals against the impugned order dated 25.5.98 but those appeals are time barred and the same are lying in the Registry. Even the notices on the applications for condonation of delay have not been issued so far as the respondents have to pay heavy sum of court fee in these appeals and therefore these appeals can't be listed before the Court unless the requisite amount of court fee is deposited.

6. We have considered the submissions made by the learned Assistant Government Pleader and we have gone through the order dated 10.10.96 passed by the Division Bench. In such matters each case has to be decided on the basis of its own facts and the evidence which is made available in the given case. We will find that in FA No.1783/84 no evidence like the documents Exh.20,21 & 22 was there and merely because the case in which the First appeal 1783/84 was decided on 10.10.1996, the concerned land was in the Gramthal of Village Sanand and in the present case it is a little away i.e. at the outskirts of village Sanand, it can't be said that on that basis alone the higher rate of compensation should be denied. It can't be said that in F.A.No.1783/84, the Division Bench has laid down any such rule or principle of law with regard to the award of the compensation and that on application of such rule or principle the compensation should not exceed the rate of Rs.23/- per sq.mtr. We can't say what rate the Division Bench would have fixed, had the documents such as Ex.20, 21 and 22 been there on record for its consideration in F.A.No.1783/84 decided on 10.10.96. Whether a particular land is in a Gramthal of a village or at the outskirts of that village, the value of the land would depend upon several other factors also and the mere location of a land in Gramthal of a village can't be the sole guiding factor. Gramthal includes interior, congested, less important and prime locations also. The documentary evidence which has been relied upon in the instant case through Exh.20,21 & 22 by the learned Counsel for the appellants shows that the case in which the compensation was granted at the rate of Rs.45/per sq.mtr, the lands were more centrally situated, they are just adjoining to Sanand Town and National Highway leading to Saurashtra was also nearby the acquired lands. It has not been disputed even before us that the lands in question are comparable with the lands which were concerned in Exh.20,21 and 22. The impugned order dated 25.5.98 shows that the court has considered the relevant factors with regard to the developed land which was concerned in these cases and it has also been recorded that the lands which have been acquired near Sanand for Sanand-Devki Road are only 1/2 km away from the lands in question and with regard to the lands acquired for Sanand-Devki Road the compensation was granted by the court at the rate of Rs.55/- per sq.mtr as per Exh.20 in land acquisition cases no.643/89 and 679/89 and yet another case it was awarded at the rate of Rs.50/- per sq.mtr in land acquisition case no.1630/87. It has also been noticed in the impugned order dated 25.5.98 that on 7.12.84 the identical land was purchased at the rate of Rs.150/- per sq.mtr and this land which

has been purchased at the rate of Rs.150/- per sq.mtr. is not away from the lands in question. What should be the rate at which compensation is to be awarded has to be considered on the basis of the evidence produced in that case and the deposition which is made by the claimants. Keeping in view the entirety of the facts relating to the lands in question and the industrially developed area on the road side as per the material available in this case, it can't be said that such evidence was available in the case out of which F.A.No.1783/84 arose and therefore merely because with regard to some land in Gramthal of Village Sanand, the Division Bench on the basis of the evidence available in that case awarded the compensation at the rate of Rs.23/per sq.mtr. only it is not possible for this Court to ignore the material and evidence available in the present case and accept the contention that no compensation at the rate higher than Rs.23/- per sq.mtr can be granted to the claimants in the present case. In our opinion the First Appeal No.1783/84 was decided on its own facts where the evidence as is available in the present case was not available. It is also not disputed before us that in the matters at hand no evidence whatsoever was laid on behalf of the respondents. It was only the claimant who had made his deposition, and such deposition and the claim, was supported by the documents through which the compensation had been awarded at a higher rate in identical case keeping in view the developed area adjoining the developed township at Sanand. The decision dated 10.10.96 in F.A.1783/84 is therefore of no avail to the respondents in the present case.

7. In Dy.General Manager, ONGC V/s. Chaturji Lalaji (Supra) the award was made by the High Court keeping in view the acquisition of land in the same village as a guide and it was also considered that the appreciation in the value of the land at the rate of 10% p.a. was acceptable and the award was modified accordingly for the purpose of determining the compensation. It was considered by the Division Bench that in the group of appeals which was under consideration the notification under section 4 (1) of the Act was published on 1.2.1990 and therefore a reasonable rise of appreciation during the period of nine years from March 1981 had been considered because it was found that in FA No.2683/92 the notification was published in March 1981 and for the acquired land of the same village amount of Rs.17/- per sq.mtr was granted. Accordingly a reasonable rise for appreciation during the period of 9 years was considered and a rise of 10% p.a. was considered for the appreciation of the land. Thus the principle of rise of

10% p.a. had been accepted.

8. In Gokal Vs. Maharashtra (Supra) the Supreme Court considered the question of enhancement with the time. In case of lands required notifications under section 4 were issued in March 75, May 76, September 76 and January 78. In the same village the price of the lands sold in October 1974 were considered and having regard to the fact that there must have been a rise in market price between the lands sold in 1974 and the dates of acquisition between 75 to 78 the enhanced compensation was fixed at the rate of Rs.22/-, 25/-, 26/-, 30/- per sq.yard as compared to the rate of Rs.17.50 per sq.yard. with reference to the dates of notification under section 4 i.e. 20.3.75, 26.5.76, 3.9.76 and 6.1.78 respectively. In the facts of the case before us we find that the compensation was awarded in Exh.20, 21 & 22 at the rate of Rs.55/-, Rs.50/- and Rs.45/- in the lands near the same village and the lands in question being identical the appellants are certainly entitled atleast to the lowest rate i.e. Rs.45/- per sq.mtr and they are further entitled to the increase of 10% p.a. To arrive at the fair market rate in respect to the lands concerned in these appeals keeping in view the dates of the notification under section 4 i.e. 5.9.91 and in case of the lands concerned in Exh.20,21 and 22 the dates of notification u/s. 4 being 13.6.85, 20.12.84 and 20.5.81 respectively and keeping in view the lowest rate of Rs.45/- per sq.mtr. in case of Exh.22 in which the date of notification u/s. 4 is 20.5.81, even if 10% increase p.a. for ten years i.e. from 1981 to 1991 is granted while determining the rate of compensation, the award of compensation at the rate of Rs.90/- per sq.mtr. (45 + 4.5 x 10 = 90) will be just and proper and therefore we find that the claimants are entitled to be paid the compensation at the rate of Rs.90/- per sq.mtr.

9. So far as the appellant's contention based on Section 23(1-A) is concerned, we find that the use of the words "... whichever is earlier" in Sec.23 (1-A) is very significant. In the case of Assistant Commissioner Gadhak Vs. Mathapati Basanpati Laeu (Supra) the Supreme court had considered the payment of additional amount under Section 23 (1-A), intended to be paid from the date of taking possession. It was a case in which the advance possession was taken before the publication of the notification under section 4(1) as is the case before us. The Supreme Court held that the owners will be entitled to payment of additional amount as compensation under Section 23 (1-A) from the date of taking over the possession in cases where the possession is taken in

advance and the notification under Section 4(1) is issued later on. The factual position in the case at hand is that the possession was taken in 1962-63 and the notification was issued as late as on 5.9.91 and on this factual premises it is established that the claimants were deprived of the enjoyment of the land right from 1962-63. Merely because the notification under Section 4(1) has been issued after a period of more than 28 years, it can't be said that the claimant may get this benefit under Section 23 (1-A) only from the date of notification under section 4. In view of the law laid down by the Supreme Court after considering the scope of Section 23 (1-A) it is clear that the case where the possession is taken in advance - notification under section 4 is issued later on, the owners are entitled to an additional amount of 12% p.a. of the market value from the date of taking possession and that is the correct import of Section 23 (1-A). On application of this principle the benefit of 12% p.a. as an additional amount can't be denied. It appears that this entitlement of the claimants under Section 23 (1-A) has escaped the notice of the Reference court while passing the impugned order but this honest and just claim which is admissible to the claimants on the principle laid down by the Supreme court can't be denied and we hold that the claimants are entitled to this additional benefit of 12% p.a. of the market value from the date on which the possession of the land was taken from them. These five appeals succeed accordingly and the impugned order dated 25.5.98 and the decree based thereon are modified in favour of the appellants for the award and compensation at the rate of Rs.90/- per sq.mtr and also for the benefit of 12% p.a. from the date from which they were divested of the possession, as required by the provisions of Section 23 (1-A) of the Land Acquisition Act. In all other aspects the impugned order does not require any interference. All legal consequences to follow. No order as to costs.

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